

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

WILLIAM ROBERTS WILSON, JR., and
ROBERTS WILSON, JR., P.C., Successor to
WM. ROBERTS WILSON, JR., P.A.

PLAINTIFFS

V.

CIVIL ACTION NO. 3:09CV006-B-A

RICHARD F. SCRUGGS, RICHARD F. SCRUGGS, P.A.,
SMBD, INC. f/k/a SCRUGGS, MILLETTE, BOZEMAN
AND DENT, P.A., SLF, INC. f/k/a THE SCRUGGS LAW
FIRM, P.A., EDWARD J. PETERS, STEVEN A. PATTERSON,
TIMOTHY BALDUCCI, DAVID ZACHARY SCRUGGS, AND
JOHN DOES 1 - 10

DEFENDANTS

**SPECIAL APPEARANCE AND REQUEST FOR LEAVE OF COURT
TO FILE REBUTTAL**

COMES NOW the United States of America, by and through Jim M. Greenlee, United States Attorney for the Northern District of Mississippi, and specially appears¹ to request leave of Court to file a Rebuttal to Plaintiffs' Reply to Special Appearance and Response to Plaintiffs' Motion for Preservation and Retention of Documents.

A brief, two-page Rebuttal is necessary to provide clarification on an issue before this Court, and will not cause any delay in the adjudication of this matter. A copy of the proposed Rebuttal is attached hereto as Exhibit "A".

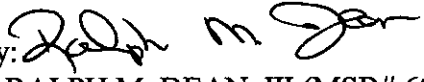
For the foregoing reasons, the United States of America respectfully requests that this Court grant it leave to file the attached Rebuttal to Plaintiffs' Reply to Special Appearance and

¹ The United States makes only a "special appearance" herein as it is not a party to this litigation, has not been served with process in the captioned case, and is not subject to the *in personam* jurisdiction of the Court. In making this appearance, the United States in no way waives any of its Fed. R. Civ. P. Rule 12(b) defenses, specifically, lack of personal jurisdiction (R. 12(b)(2)), insufficiency of process (R. 12(b)(4)), insufficiency of service of process (R. 12(b)(5)), failure to state a claim upon which relief can be granted (R. 12(b)(6)), and failure to join a party under Rule 19 (R. 12(b)(7)).

Response to Plaintiffs' Motion for Preservation and Retention of Documents and all other relief requested therein.

Respectfully submitted,

JIM M. GREENLEE (MSB# 5001)
United States Attorney

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DEFENDANTS

**REBUTTAL TO PLAINTIFFS' REPLY TO UNITED STATES OF AMERICA'S
SPECIAL APPEARANCE AND RESPONSE TO PLAINTIFFS' MOTION FOR
PRESERVATION AND RETENTION OF DOCUMENTS**

COMES NOW the United States of America, by and through Jim M. Greenlee, United States Attorney for the Northern District of Mississippi, and specially appears¹ to file a Rebuttal to Plaintiffs' Reply to Special Appearance and Response to Plaintiffs' Motion for Preservation and Retention of Documents.

It is undisputed that "one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." Martin v. Wilks, 490 U.S. 755, 761 (1989) (citing Hansberry v. Lee, 311 U.S. 32, 40 (1940)). In fact, nowhere in their six-page Reply do the Plaintiffs offer any reason whatsoever why it is proper for this Court to order the United States, which is not a party to this private civil action, to

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Exhibit
"A"

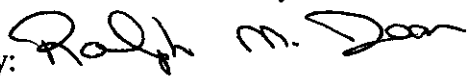
retain and preserve documents. The fact that there is a parallel civil forfeiture proceeding ongoing, instituted by the United States and to which the United States is a party, has absolutely no bearing on the Court's jurisdiction over the United States in this private lawsuit, in which the United States was **not** designated as a party and has **not** been made a party by service of process.

The Plaintiffs repeatedly cite to the civil forfeiture action, and the subpoenas filed therein, as support for their request for an order in this separate civil proceeding. In fact, in their final paragraph requesting relief, they state that "[t]he United States of America is a party to the forfeiture action," but wholly ignore the fact that the United States is **not** a party to *this* action. Additionally, as reflected in their Certificate of Service, the Plaintiffs have again failed to even give notice of their filing to the United States, the only party against whom they seeks relief.

For the foregoing reasons, and based upon the authorities cited herein, the United States of America respectfully submits, and Plaintiffs have not disputed, that the Court is without *in personam* jurisdiction over the United States to grant the relief requested, and requests that this Court deny the Plaintiffs' Motion to Order Preservation and Retention of Documents and all other relief requested therein.

Respectfully submitted,

JIM M. GREENLEE (MSB# 5001)
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